

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LYNN MARIE LUCIER,

Defendant-Appellant.

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UNPUBLISHED

April 4, 2006

No. 259207

Alpena Circuit Court

LC No. 03-005964-FC

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial conviction of second-degree murder, MCL 750.317, for which she was sentenced to 9-1/2 to 18 years' imprisonment, with credit for 149 days served. Defendant challenges the admissibility of statements attributed to the decedent. We affirm because the victim's statements to witnesses were either admissible by hearsay exception or constituted harmless error.

This case involves the death of Genevieve Lucier, defendant's mother. Defendant moved into her mother's home and cared for her after defendant's father and the victim's husband died in 1998. On February 2, 2004, paramedics were called to the home and found the victim unresponsive and in need of oxygen. The victim was taken to the hospital and was diagnosed as suffering from chronic wasting of her muscles and arthritis. The victim also had numerous ulcers or bedsores, including a large sore on the left side of her neck, sores on her buttock, and sores on the heels of her feet. The bedsore on the victim's neck had a portion of her nightgown embedded into the wound and the bedsores on the heels of the victim's feet had her socks embedded into the wounds. The victim died in the hospital later that day. The pathologist testified that the cause of death was dehydration, malnutrition, and ulcers that led to a blood stream infection and meningitis. Defendant was charged with open murder for her role in the victim's death. After the close of proofs, the trial court granted defendant a directed verdict on the first-degree murder charge. The jury found defendant guilty of second-degree murder.

Defendant's sole issue on appeal is whether the trial court erred when it allowed the admission of the victim's statements through other witnesses under the hearsay exception in MRE 803(3). We review a trial court's decision to admit evidence for an abuse of discretion. *People v Moorer*, 262 Mich App 64, 67; 683 NW2d 736 (2004). "An abuse of discretion exists if an unprejudiced person would find no justification for the ruling made." *People v Geno*, 261 Mich App 624, 632; 683 NW2d 687 (2004), quoting *People v Watson*, 245 Mich App 572, 575;

629 NW2d 411 (2001). Additionally, error in the admission of evidence will not be a ground for reversal unless the refusal to reverse would result in substantial injustice. *People v McLaughlin*, 258 Mich App 635, 650; 672 NW2d 860 (2003).

MRE 803(3) provides an exception to the hearsay rule for statements made concerning a then existing mental, emotional, or physical condition. Specifically, the rule states:

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will. [MRE 808(3).]

"It is well accepted that evidence that demonstrates an individual's state of mind will not be precluded by the hearsay rule." *People v Fisher*, 449 Mich 441, 449; 537 NW2d 577 (1995). "Statements of mental, emotional, and physical condition, offered to prove the truth of the statements, have generally been recognized as an exception to the hearsay rule because special reliability is provided by the spontaneous quality of the declarations when the declaration describes a condition presently existing at the time of the statement." *Moorer, supra* at 68-69. Statements made by a declarant can also be admitted under MRE 803(3) if they relate to a then existing plan or intent. *Fisher, supra* at 450.

The majority of the statements admitted by the trial court clearly fit under the MRE 803(3) exception, as they were statements that the victim was afraid of defendant and statements that implied that the victim was hungry. These statements related to the victim's then existing mental, emotional, or physical condition at the time the statements were made. The victim's requests for people not to make defendant mad also fit under MRE 803(3), as they were evidence of the victim's fear of defendant. The court did not abuse its discretion in allowing these statements to be admitted.

Additionally, the admissible statements were not unfairly prejudicial to defendant. Evidence offered against a party is, by its very nature, prejudicial. But the pertinent question is whether unfair prejudice substantially outweighs the probative value of the evidence. *Fisher, supra* at 451. Unfairly prejudicial evidence is not evidence that is merely damaging, but rather evidence that is likely to be given disproportionate weight by the jury or evidence that the court finds would be inequitable for its proponent to use. *People v Mills*, 450 Mich 61, 75-76; 537 NW2d 909, mod 450 Mich 1212 (1995). Additionally, courts have realized that MRE "'403 determinations are best left to a contemporaneous assessment of the presentation, credibility, and effect of testimony' by the trial judge." *People v Bahoda*, 448 Mich 261, 291; 531 NW2d 659 (1995), quoting *People v VanderVliet*, 444 Mich 52, 81; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994).

The prosecutor argues that this evidence was offered to show premeditation and motive.<sup>1</sup> The statements were offered to show that the victim feared defendant and to explain why the

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<sup>1</sup> At the time the evidence was offered, the first-degree murder charge was still at issue.

victim would not have asked to be removed from defendant's care. The statements also showed that the victim and defendant had a strained relationship and presented a possible motive in the case. In cases where the evidence is circumstantial and the only witness to the crime is the accused, "evidence of motive would be highly relevant." *Fisher, supra* at 453. Although the statements were not favorable to defendant, she has not shown that their admission was unfairly prejudicial. Therefore, we find that the probative value of the admissible statements was not substantially outweighed by unfair prejudice to defendant. MRE 403.

The statements, however, that defendant was mean to the victim, that defendant would make the victim stay in bed, and that defendant would not let the victim use the phone were not admissible under MRE 803(3). Those statements did not describe the victim's then existing emotion, mental, or physical condition. They also did not describe a future intent or plan of the victim; the statements were simply the victim's descriptions of past events. Hence, the trial court erred in admitting those statements into evidence. "Evidentiary error does not require reversal unless it involves a substantial right[] and[,] after an examination of the entire cause, it affirmatively appears that it is more probable than not that the error was outcome determinative." *Moorer, supra* at 74. There was sufficient evidence presented, even without considering the inadmissible statements, that defendant knowingly created a high risk of death or great bodily harm to the victim by her lack of care and concern for the victim, which supported the second-degree murder conviction. See *People v Bulmer*, 256 Mich App 33, 36; 662 NW2d 117 (2003); *People v Mayhew*, 236 Mich App 112, 125; 600 NW2d 370 (1999). Therefore, any error by the trial court on the admission of evidence was harmless.

Affirmed.

/s/ Michael R. Smolenski

/s/ Donald S. Owens

/s/ Pat M. Donofrio